

HOUSE No. 4502

The Commonwealth of Massachusetts

PRESENTED BY:

Bill Bowles, James E. Timilty

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to service member's custodial rights.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Bill Bowles	2nd Bristol
James E. Timilty	Bristol and Norfolk

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

An Act relative to service member's custodial rights.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Amendment to Mass General Laws c. 208 section 28 and to Mass General Laws c. 215 section 6c, by adding to each law the following new paragraphs:

1. As used in this section:

- (a) The term “deployment” means the temporary transfer of a service member serving in an active-duty status to another location in support of combat or some other military operation, to include any tour of duty classified by the service member’s branch of the armed forces as “remote” or “unaccompanied.”
- (b) The term “mobilization” means the call-up or activation of a National Guard or Reserve service member to extended active duty status. For purposes of this definition, 'mobilization' does not include National Guard or Reserve annual training.
- (c) The term “temporary duty” means the transfer of a service member from one military base to a different location, usually another base, for a limited period of time to accomplish training or to assist in the performance of a noncombat mission.
- (d) Military duties impacting parenting functions means those obligations imposed, voluntarily or involuntarily, on a parent serving in the armed forces that may interfere with that parent’s ability to fulfill his or her responsibilities under a temporary or permanent custody or visitation order.

2. When a parent receives deployment, mobilization, or temporary duty orders from the military that involve moving a substantial distance away from the parent's residence or otherwise will have a material effect on the parent's ability to exercise parenting functions under a temporary or permanent custody or visitation order, the court shall, upon motion of either parent, hold an expedited hearing for the purpose of entering such temporary orders for the care, custody and maintenance of the minor child or children during the period of such deployment, mobilization or temporary duty as are in the best interest of the child or children. The expedited hearing shall be held prior to the start of the deployment, mobilization or temporary duty, except that it may be held after if the motion for the hearing is filed less than seven days before the start of the deployment, mobilization or temporary duty.

3. Any custody or visitation order for the child or children entered on account of or during the parent's temporary duty, deployment or mobilization shall end no later than 14 days after the temporary duty, deployment or mobilization ends, but this shall not impair the discretion of the court to conduct an expedited or emergency hearing upon the filing of a motion, supported by an affidavit, alleging immediate danger or irreparable harm to the child.

4. The court shall, upon reasonable advance notice and for good cause shown, allow a military parent to present testimony and evidence by electronic means in custody and visitation matters instituted under this section when the military duties of the parent have a material effect on the parent's ability to appear in person at a regularly scheduled hearing. The phrase 'electronic means' includes communication by telephone, video teleconference, or the Internet.

5. The effect of a parent's military duties on parenting functions, and the temporary disruption to the child's schedule as a result of those military duties, shall not constitute a material and substantial change in the circumstances of the parties warranting modification of a prior judgment of custody or visitation.

6. If the parent with temporary or permanent custody or visitation rights receives military temporary duty, deployment, or mobilization orders that involve moving a substantial distance from the parent's residence or otherwise have a material effect on the parent's ability to exercise parenting functions, the court may delegate the parent's custodial or visitation rights, or a portion thereof, to a member of the child's family having a close and substantial relationship to the child for the duration of the parent's absence, if delegating such rights is in the child's best interest. Such a court ordered temporary delegation of the military parent's custodial or visitation rights shall not create a separate right to custody or visitation for a person other than a parent.